

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DARREN MOORE,

Plaintiff,

vs.

Case No.: 2-10-cv-11824

Honorable: Stephen J. Murphy, III

Magistrate Judge: Mona K. Majzoub

LIEUTENANT E. JONES, POLICE OFFICER
JANOSKEY, POLICE OFFICER COLON,
POLICE OFFICER S. SALISBURY, CITY OF
DETROIT POLICE DEPARTMENT and CITY
OF DETROIT,

Defendants.

DAVID B. TRIVAX (P-38798)
Serlin Trivax & Stearn, PLLC
Attorney for Plaintiff
31780 Telegraph Road, Suite 120
Bingham Farms, MI 48025
(248) 663-2666

MARION R. JENKINS (P-26257)
Assistant Corporation Counsel
Attorney for Defendants
660 Woodward Avenue
1650 First National Building
Detroit, MI 48226
(313) 237-3032

MOTION TO DISMISS

NOW COMES Defendant, City of Detroit, a municipal corporation, by and through its undersigned attorney and for its Motion to Dismiss for failure to serve the individual Defendants pursuant to FRCP 4 (m) and FRCP 12, says as follows:

1. That on April 13, 2010 Plaintiff, Darren Moore, filed his Complaint and Summons in the Wayne County Circuit Court with the Summons to expire on July 13, 2010.
2. That a Complaint and Summons were served upon the City of Detroit Law Department on April 22, 2010 and this case was then timely removed to this Court.
3. That in his Complaint Plaintiff names Lieutenant E. Jones, Police Officer

Janoskey, Police Officer Colon and Police Officer S. Salisbury (hereinafter referred to as the individual Defendants) as Defendants in this matter.

4. That the individual Defendants have never been served with a copy of the Complaint and Summons.

5. That pursuant to MCR 2.102 the Wayne County Circuit Court Summons has now expired.

6. That a review of the civil docket for this case shows that no Summons was ever sought or issued by United States District Court.

7. That there is no good cause for the failure to serve the individual Defendants within 91 days after the Complaint was filed in the Wayne County Circuit Court (MCR 2.102) or within 120 days after this case was removed to the U.S. District Court (FRCP 4 (m)).

WHEREFORE, Defendants, Lieutenant E. Jones, Police Officer Janoskey, Police Officer Colon and Police Officer S. Salisbury respectfully request that this matter be dismissed with prejudice as to them.

Respectfully submitted,

/s/ Marion R. Jenkins

Assistant Corporation Counsel
Attorney for Defendants
660 Woodward Avenue
1650 First National Building
Detroit, MI 48226
(313) 237-3032
JenkMR@detroitmi.gov
(P-26257)

Dated: August 23, 2010

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BRIEF IN SUPPORT OF MOTION TO DISMISS

FACTS

On April 13, 2010 Plaintiff, Darren Moore, filed a Complaint in the Wayne County Circuit Court alleging constitutional violations. The Summons issued in that case expired July 13, 2010. The only Defendant ever served was the City of Detroit, a municipal corporation. The case was timely removed to the U.S. District Court. A U.S. District Court summons was never issued and the individual Defendants were never served.

ARGUMENT

The Wayne County Circuit Court Summons expired July 13, 2010 without any individual

Defendants ever being served. No extension of the Summons was ever requested. MCR 2.102 (E) provides that on expiration of a Summons, an action is deemed dismissed as to a Defendant who has not been served with process. Any claim that Plaintiff may have had in the Wayne County Circuit Court is now deemed dismissed.

FRCP 4 (m) provides that any Defendant not served within 120 days after the Complaint is filed must be dismissed by the Court. The individual Defendants were never served and this case must now be dismissed as to them.

WHEREFORE, Defendants Lieutenant E. Jones, Police Officer Janoskey, Police Officer Colon and Police Officer S. Salisbury respectfully request that this matter be dismissed with prejudice as to them.

Respectfully submitted,

/s/ Marion R. Jenkins

Assistant Corporation Counsel

Attorney for Defendants

660 Woodward Avenue

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Detroit, MI 48226

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JenkMR@detroitmi.gov

(P-26257)

Dated: **August 23, 2010**

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

David B. Trivax
Serlin Trivax & Stearn, PLLC
31780 Telegraph Road, Suite 120
Bingham Farms, MI 48025

and hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants(s):

None.

/s/ Marion R. Jenkins

Assistant Corporation Counsel
Attorney for Defendant City of Detroit
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